

precontract negotiation phase during the development of a contract proposal. Within 30 days the Secretary shall acknowledge receipt of the proposal and, if requested by the Indian tribe or tribal organization, shall confer with the Indian tribe or tribal organization to develop a negotiation schedule. The negotiation phase shall include, at a minimum:

(1) The provision of technical assistance under section 103 of the Act and paragraph (a) of this section;

(2) A joint scoping session between the Secretary and the Indian tribe or tribal organization to review all plans, specifications, engineering reports, cost estimates, and other information available to the parties, for the purpose of identifying all areas of agreement and disagreement;

(3) An opportunity for the Secretary to revise plans, designs, or cost estimates of the Secretary in response to concerns raised, or information provided by, the Indian tribe or tribal organization;

(4) A negotiation session during which the Secretary and the Indian tribe or tribal organization shall seek to develop a mutually agreeable contract proposal; and

(5) Upon the request of the Indian tribe or tribal organization, the use of alternative dispute resolution to resolve remaining areas of disagreement under the dispute resolution provisions under subchapter IV of chapter 5 of the United States Code.

**§ 900.123 What happens if the Indian tribe or tribal organization and the Secretary cannot develop a mutually agreeable contract proposal?**

(a) If the Secretary and the Indian tribe or tribal organization are unable to develop a mutually agreeable construction contract proposal under the procedures in § 900.122, the Indian tribe or tribal organization may submit a final contract proposal to the Secretary. Not later than 30 days after receiving the final contract proposal, the Secretary shall approve the contract proposal and award the contract, unless, during the period the Secretary declines the proposal under sections 102(a)(2) and 102(b) of the Act (including

providing opportunity for an appeal under section 102(b)).

(b) Whenever the Secretary declines to enter into a self-determination contract or contracts under section 102(a)(2) of the Act, the Secretary shall:

(1) State any objections to the contract proposal (as submitted by the Indian tribe or tribal organization) in writing and provide all documents relied on in making the declination decision within 20 days of such decision to the Indian tribe or tribal organization;

(2) Provide assistance to the Indian tribe or tribal organization to overcome the stated objections;

(3) Provide the Indian tribe or tribal organization with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under the regulations set forth in subpart L, except that the Indian tribe or tribal organization may, in lieu of filing the appeal, initiate an action in a Federal district court and proceed directly under section 110(a) of the Act.

**§ 900.124 May the Indian tribe or tribal organization elect to use a grant in lieu of a contract?**

Yes. A grant agreement or a cooperative agreement may be used in lieu of a contract under sections 102 and 103 of the Act when agreed to by the Secretary and the Indian tribe or tribal organization. Under the grant concept, the grantee will assume full responsibility and accountability for design and construction performance within the funding limitations. The grantee will manage and administer the work with minimal involvement by the government. The grantee will be expected to have acceptable management systems for finance, procurement, and property. The Secretary may issue Federal construction guidelines and manuals applicable to its construction programs, and the government shall accept tribal proposals for alternatives which are consistent with or exceed Federal guidelines or manuals applicable to construction programs.